IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.178 OF 2006

IN

NOTICE OF MOTION NO. OF 2006

IN

L.C. SUIT NO.857 OF 2006

WITH

CIVIL APPLICATION NO.246 OF 2006

Shree Shakti Co-operative Housing
Society Ltd. ...Appellants

Versus

Wadhwa Estates & Developers
(India) Pvt.Ltd. & Ors. ...Respondents

.....

Mr.Rajeev Matkar for Appellants.

Mr.V.A.Thorat, Sr.Counsel with Mr.P.K.Shroff, Mr.S.Joshi & Ms.Radhika P. i/b P.K.Shroff & Co. for Respondent No.1.

Ms.Geeta Joglekar for Respondents 3 to 5.

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CORAM: A.M.KHANWILKAR, J.

MARCH 17, 2006.

P.C.

1. Heard Counsel for the parties.

2. This Appeal from Order takes exception to the order passed by the Trial Judge dated 20th February 2006 refusing to grant ad-interim relief. The Court below has noted that the excavation work was already complete when the matter was moved for ad-interim orders. Besides, IOD as well as CC was also received during the relevant period. The photographs which are now produced before me indicate that the foundation work is already complete and the structure up to ground floor has already been partly erected.

3. During the course of arguments, Counsel for the Appellant had made serious grievance that the Appellant had made representation to the Executive Engineer apprehending serious threat to the compound wall and underground water tank as well as to the life and property of the Appellant Society and its members. In this context, Counsel for the Corporation was called upon to ascertain from the relevant file whether this representation

was duly examined by the appropriate authority before issuance of the Commencement Certificate. Counsel for the Corporation submits across the bar that such exercise was carried out by the appropriate Authority before issuance of Commencement Certificate.

4. It is not necessary for me to elaborate on these aspects. For the developments which have taken place in the meantime, to bring quietus to the controversy relevant for deciding the grant or non-grant of interim injunction pending the Suit, the appropriate course, to my mind, will be to direct the Trial Court to decide the Notice of Motion expeditiously, preferably by the end of April 2006.

5. Counsel appearing for the parties assure that they will extend full cooperation to the Trial Court for early disposal of the Notice of Motion and no request for adjournment on any count will be made. The parties assure through their Counsel that pleadings in the pending Notice of Motion will be exchanged and completed on or before 27th March

2006, so that, sufficient time is made available to the Trial Court for final disposal of the Notice of Motion.

6. It is made clear that all steps taken by the Respondents hereafter will be subject to the outcome of the said proceedings and entirely at the risk, cost and consequence of the Respondents and no equities can be claimed later on.

7. The Appeal is disposed of leaving all questions open on the above terms.

8. It will be open to the parties to move the Trial Court for preponing the date of hearing after the pleadings are completed on or before 27th March 2006.

9. In view of the above order, cognate Civil Application also stands disposed of.

A.M.KHANWILKAR, J.